

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 28 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

**STATE FARM FIRE & CASUALTY
INSURANCE COMPANY,**

Plaintiff - Appellee,

v.

MICHAEL A. HACHEZ,

Defendant - Appellant,

and

CHARLES A. HACHEZ,

Defendant.

No. 04-36132

D.C. No. CV-03-00020-F-RRB

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, District Judge, Presiding

Argued and Submitted July 27, 2006
Anchorage, Alaska

Before: **KOZINSKI, BERZON** and **TALLMAN**, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

1. Hachez would have been relieved of his duty to cooperate had State Farm first materially breached the insurance contract. Great Divide Ins. Co. v. Carpenter, 79 P.3d 599, 608 (Alaska 2003) (per curiam). But State Farm met its duty to provide a conflict-free defense by appointing CHI counsel. See id. at 610. And even if State Farm breached the covenant of good faith and fair dealing by refusing to investigate the settlement offer, that breach was not material. If State Farm failed to accept a reasonable settlement, it could be liable “for any excess judgment against its insured.” Jackson v. Am. Equity Ins. Co., 90 P.3d 136, 142 (Alaska 2004). The district court did not err in finding that State Farm had not materially breached its contract.

2. Likewise, the district court did not err in finding that Hachez’s acceptance of a settlement offer breached Hachez’s duty to cooperate, see Grace v. Ins. Co. of N. Am., 944 P.2d 460, 464 (Alaska 1997), and that this breach prejudiced State Farm. Id. at 464 n.7.

AFFIRMED.